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No. 12, Original

In the Supreme Court of the United States

OCTOBER TERM, 1945

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MEMORANDUM IN REGARD TO STATEMENT BY STATE OF CALIFORNIA OF PROPOSITIONS OF LAW AND FACT PLACED IN ISSUE BY ITS ANSWER

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1. On April 22, 1946, this Court requested the Attorney General of the State of California to file "a succinct statement, without argument or statement of evidence, of the several propositions of law and fact, separately stated and enumerated, which he deems to have been placed in issue by the answer filed in behalf of the State."

The Statement filed in behalf of the State does not go far to dispel the confusion produced by the 822-page Answer, and, if anything, furnishes additional support for the Motion to Strike the Answer. Although the Statement is divided into sixteen separately numbered parts, it is still difficult to obtain any clear understanding as to what de-

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fenses are intended to be raised. Thus, parts IV, V, VI, VIII, and IX of the Statement all seem to involve in one form or another a contention to the effect that the United States has recognized and acquiesced in the title of the State and is therefore precluded by estoppel or some cognate doctrine from asserting rights in the lands. These five separately numbered parts purport to summarize nearly the entire 822-page Answer. It is not at all clear whether these five parts are intended to set forth five *separate* propositions upon which the State relies, and it is even less clear as to precisely what ground is covered by each of those propositions if they are to be regarded as independent of one another.

The Motion to Strike filed herein by the United States attacks the State's Answer in its entirety on the ground that the Answer is prolix and is so replete with arguments, evidentiary matter and conclusions, both of law and fact, that it is virtually impossible to segregate and identify the well-pleaded facts for the purpose of determining the issues intended to be tendered. In the memorandum in support of the motion it is pointed out that the unwieldy and voluminous nature of the Answer—consisting of a great mass of irrelevant matter indiscriminately intermingled with items which may be relevant—makes it difficult to know what issues, if any, are referable to a

master and leaves the case in such a state of confusion and uncertainty as seriously to threaten the orderly progress and conduct of the litigation. The Statement filed by the State in no way alleviates this situation. To be sure, the Statement is relatively brief, and evidentiary matters have been substantially eliminated, but it is in effect nothing more than an outline of the Answer itself, being almost as confused and disorganized as the document it attempts to explain. It does not provide the Court with a succinct presentation of the issues.

It is believed that the real effect of the Statement filed in behalf of the State is a confirmation of the considerations set forth in the Motion to Strike. It contains nothing which might justify a deviation by the Government from the position taken in the Motion. Even if the Statement were not as unsatisfactory as it is, the Motion to Strike should be granted. The Government should not be confronted with the burden of sifting the entire 822-page Answer, sentence by sentence, with a view to admitting, denying, or challenging the relevance of each of the great mass of allegations, the overwhelming majority of which have no place in a pleading.

2. The purpose of this suit is to obtain an adjudication as to rights in the lands underlying a portion of the Pacific Ocean adjacent to the coast

of California.[1] In arriving at a decision on this basic issue it will be necessary for the Court to consider and decide one or more questions; and this Court's request of a Statement obviously contemplated an enumeration of such of the questions as the State deemed to have been placed in issue.

As heretofore indicated, the Statement filed in behalf of the State is nearly as confusing as the Answer, and the precise nature of the question or questions intended to be presented by each of the several numbered sections cannot be ascertained with any degree of certainty. It may be that the State intends to present for consideration 16 different questions. On the other hand, it is possible that two or more of the several sections present the same question in different ways. Although it is extremely difficult to state with confidence what principal defenses are intended to be tendered by California, and although there is considerable risk of being in conflict with the intent of the pleader, it would seem that the mat-

[1] Lands underlying the inland waters of the State, including those under rivers, harbors, bays, and all waters landward of the ordinary low-water mark on the coast, are specifically excluded. See Statement in Support of Motion for Leave to File Complaint, p. 2:

This suit does not involve any bays, harbors, rivers or other inland waters of California, nor does it involve the so-called tidelands, namely those lands which are covered and uncovered by the daily flux and reflux of the tides. It is limited solely to that portion of the open sea embraced within the three-mile belt, sometimes referred to as the marginal sea.

ter contained in the Statement and Answer relate to probably not more than three central propositions of law:

(a) That, under applicable treaty, statutory, and constitutional provisions, as judicially construed, the lands in question belong to the State, and the United States has no rights in them;

(b) That the United States has recognized and acquiesced in the rights of the State, and is therefore precluded by estoppel or some related doctrine from asserting any rights in the lands;

(c) That the issues raised by the complaint are *res judicata* by reason of the judgment in *United States* v. *Mission Rock Co.*, 189 U. S. 391.[2]

If these are the basic defenses which the State intends to raise, and if they were clearly set forth in a proper answer, the United States would then be in a position to challenge the legal sufficiency of each such defense. The case might then be considered by the Court on brief and oral argument.[3] On the other hand, if these points do not

[2] In general, it may be said that the first point is presented by parts I, II, and III of the Statement; the second point by parts IV, V, VI, VIII, and IX; and the third point by part VII. Parts X, XI, XII, XIII, XIV and XV deal with specific leases, and in turn depend upon the question whether the United States has any rights in the lands involved in this litigation. Part XVI appears to be a criticism of the Complaint, attacking in particular its alleged insufficiency and uncertainty.

[3] Of course, many nice and difficult questions may be raised as to whether particular areas, although nominally referred to as bays, etc., are actually inland waters or whether they

comprehend the basic defenses of the State, it should be required to file an answer which more clearly indicates the issues it wishes to raise. In either event the present Answer furnishes a virtually insuperable obstacle to the orderly conduct of this litigation. The Motion to Strike should therefore be granted.

Respectfully submitted.

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are part of the open sea. Such questions, however, may appropriately be considered at the time of framing the decree, in the event that this Court should decide that the United States is entitled to prevail with respect to lands under the three-mile belt. Questions of fact with respect to such specific areas may perhaps be determined at that time. But it is difficult to see what relevant questions of fact are presented for determination at the present stage of the litigation. Moreover, such questions may even be settled by a survey or other similar action after the conclusion of the present litigation, but they should not be employed to obscure the basic issue before the Court.

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